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The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 34

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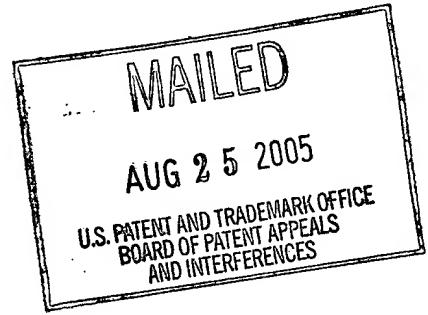
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KATSUYA NAKAGAWA

Appeal No. 2005-0791
Application No. 09/006,363

ON BRIEF



Before RUGGIERO, SAADAT, and NAPPI, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-25, which are all of the claims pending in the present application.

The claimed invention relates to a virtual keyboard in which a pressure-sensitive panel is superimposed on a display. A processor receives information of detected positions sent in a time sequence from the pressure-sensitive panel when a special

key is first pushed and thereafter when both the special key and a general key are pushed at the same time. The middle point between the two pushed positions is determined, and the general key position is calculated from the special key point and the middle point. A code is subsequently output which corresponds to the combination of the pushed special and general keys and which corresponds to the identified position. According to Appellant (specification, pages 1 and 2), by enabling the determination of positional information represented by simultaneously pushed special and general keys, the virtual keyboard of the present invention can be operated in the same manner as a conventional keyboard.

Claim 1 is illustrative of the invention and reads as follows:

1. A virtual keyboard comprising:
 - a display for displaying a keyboard;
 - a transparent pressure-sensitive panel disposed on the display; and
 - a processor for receiving information of positions detected and sent in a time sequence from the pressure sensitive panel when a special key is first pushed and thereafter when both of the special key and a general key are pushed at the same time, identifying a position of the

pushed general key according to the received position information and outputting a code corresponding to the combination of the pushed special key and the general key corresponding to the identified position.

The Examiner relies on the following prior art:¹

Dunthorn	4,914,624	Apr. 03, 1990
Yoshikawa	5,392,035	Feb. 21, 1995
Ouellette et al. (Ouellette)	5,581,243	Dec. 03, 1996

Claims 1-25, all of the appealed claims, stand finally rejected under 35 U.S.C. § 103(a). As evidence of obviousness, the Examiner offers Ouellette alone with respect to claims 1 and 4, and adds Dunthorn to Ouellette with respect to claims 2, 3, 5-18, 20, 22, and 24. With respect to claim 19, in separate rejections under 35 U.S.C. § 103(a), the Examiner offers Ouellette in view of Yoshikawa, and Ouellette in view of the admitted prior art. The Examiner also rejects claims 21, 23, and 25 under 35 U.S.C. § 103(a) as being unpatentable over Ouellette in view of Dunthorn and Yoshikawa, and also as being unpatentable over Ouellette in view of Dunthorn and the admitted prior art.

¹ In addition, the Examiner relies on Appellant's admissions as to the prior art at page 4, lines 15-24 of Appellant's specification.

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Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Briefs² and Answer for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the Examiner and the evidence of obviousness relied upon by the Examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellant's arguments set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-25. Accordingly, we reverse.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to

² The Appeal Brief (second) was filed February 9, 2004 (Paper No. 25). In response to the Examiner's Answer mailed April 2, 2004 (Paper No. 26), a Reply Brief was filed June 7, 2004, (Paper No. 27), which was acknowledged and entered by the Examiner as indicated in the communication dated June 22, 2004 (Paper No. 29).

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support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion, or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

With respect to the Examiner's 35 U.S.C. § 103(a) rejection of appealed independent claim 1 based on Ouellette, Appellant asserts that the Examiner has failed to establish a prima facie case of obviousness since all of the claimed limitations are not taught or suggested by the applied prior art reference. After reviewing the arguments of record from Appellant and the Examiner, we are in general agreement with Appellant's position as stated in the Briefs.

Initially, we agree with Appellant that Ouellette's disclosure is directed to a conventional touch-sensitive display panel in which a divided resistance technique is used to determine the coordinates of a point touched on the panel. Although the Examiner relies (Answer, pages 3 and 4) on a statement at column 1, lines 52-54 in the background section of Ouellette that a user touches the keys on a touch-sensitive screen in the same manner as a typist uses a conventional typewriter, we find no basis for the Examiner's conclusion that this supports the obviousness of the specific features set forth in appealed claim 1. As asserted by Appellant, there is nothing in the disclosure of Ouellette that suggests the determination of the positions of pushed special and general keys, let alone in the sequence set forth in claim 1.

We also find to be compelling the evidence supplied in the Rule 132 declaration by Nakagawa, originally submitted in the amendment submitted November 21, 2001, a copy of which is attached to Appellant's Brief. The declaration sets forth facts indicating the impossibility of determining the coordinates of two pushed points on a touch-sensitive panel when the two points are pushed at the same time when using a touch-sensitive panel using a divided resistance technique such as Ouellette. Given this evidence on the record before us, it is our view that any suggestion that the artisan would find it obvious to determine the position of two simultaneously pushed buttons or keys as claimed from the disclosure of Ouellette could only come from Appellant's own disclosure and not from any teaching or suggestion in the Ouellette reference itself.

In view of the above discussion, in order for us to sustain the Examiner's rejection, we would need to resort to impermissible speculation or unfounded assumptions or rationales to supply deficiencies in the factual basis of the rejection before us. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968), reh'g denied, 390 U.S. 1000 (1968). Accordingly, since all of the claim limitations are not taught or suggested by the applied Ouellette

reference, we do not sustain the Examiner's 35 U.S.C. § 103(a) rejection of independent claim 1, nor of claim 4 dependent thereon.

Turning to a consideration of the Examiner's 35 U.S.C. § 103(a) rejection of claims 2, 3, 5-18, 20, 22, and 24 based on the combination of Ouellette and Dunthorn, we do not sustain this rejection as well. Initially, we find no indication from the statement of the Examiner's position in the Answer as to how and in what manner the Ouellette and Dunthorn references would be combined to arrive at the claimed invention. Further, we agree with Appellants that, even if combined, the resulting combination of Ouellette and Dunthorn would not produce the specific combination set forth in the appealed claims.

As asserted by Appellant (Brief, pages 25 and 26; Reply Brief, pages 9-11), Dunthorn, while creating a virtual push button resulting from the simultaneous pushing of two locations on a touch-sensitive screen, never determines or is in fact concerned with the coordinate location of the second point. As such, in our view, the proposed combination of Ouellette and Dunthorn would not satisfy the claimed determination of the

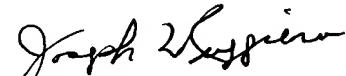
second pushed point, i.e., the general key, nor the claimed generation of coded signals corresponding to a pushed combination of keys.

We also do not sustain the Examiner's separate obviousness rejections of dependent claim 19 based on the combination of Ouellette and Yoshikawa, and Ouellette and the admitted prior art. Similarly, we do not sustain the separate obviousness rejections of dependent claims 21, 23, and 25 in which Yoshikawa and the admitted prior art are separately applied to the combination of Ouellette and Dunthorn. Although the Examiner has applied the teachings of Yoshikawa and the admitted prior art to address the particular resistance wire arrangement set forth in dependent claims 19, 21, 23, and 25, we find nothing in either of these disclosures that would overcome the innate deficiencies of Ouellette and Dunthorn discussed supra.

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In summary, we have not sustained the Examiner's 35 U.S.C. § 103(a) rejection of any of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-25 is reversed.

REVERSED



JOSEPH F. RUGGIERO)
Administrative Patent Judge)
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MAHSHID D. SAADAT)
Administrative Patent Judge)
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ROBERT E. NAPPI)
Administrative Patent Judge)
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